

## REMARKS

Claims 1-24 remain pending in the present application, with claim 25 having been withdrawn without prejudice pursuant to a restriction requirement.

This response after final action should be entered under 37 CFR 1.116(b) because the claim amendment to claim 15 merely removes an inadvertently redundant concrete curing step and improves an antecedent reference in part c. The revised declaration and this paper should be admitted to put the claims in better form for consideration in the event an appeal is filed.

This response after final action should be entered under 37 CFR 1.116(e) because the revised 37 CFR 1.131 declaration is necessary and could not have been presented earlier. The revised declaration is necessary because the Examiner has indicated that changes are needed to overcome the rejection based on the earlier-filed declaration. The revised declaration was not earlier presented because the applicants did not appreciate that the first declaration would not be regarded by the Examiner as entirely sufficient to overcome the rejection.

The Applicant will address each of the bases of rejection in Sections I-II, which follow.

### **I. Rejections to Claims 15, 16, 23 and 24 under 35 USC §112**

Claim 15 has been amended to remove the recitation of “curing the concrete.” This limitation is already included in Claim 11, from which Claim 15 depends, and was therefore redundant as recited in previously presented Claim 15. Applicants note that the method for producing multi-color concrete as described in claims 11, 15 and 16 only requires curing the concrete on one occasion, and that this method is enabled by the specification. Applicants believe that Claim 15 as amended and its dependent claim 16 are now in condition for allowance.

Applicants respectfully traverse the rejection of Claims 23 and 24 under 35 USC §112, first paragraph. Applicants submit that the specification does reasonable convey that the inventors, at the time of filing, had possession of the subject matter in those claims, specifically that the percentages of pigment and binding agent are by weight of the color dispersion. For example, page 15 of the specification, lines 2-4 state that “Tables 7, 8, 9, 10 and 11 are examples of compositions of various types of spray color dispersions, including standard and muted compositions, suitable for use in the present invention.” Tables 7-11 appear at pages 19-21 of the specification, and in each example the percentages are given as weight percentages of the composition.. Further, also on page 15 at lines 5-

9, the specification states that “in each of these spray color dispersions a typical pigment water dispersion is first prepared by the standard method of mixing and milling one or more pigments (for example, 50 to 70% of the total pigment water dispersion, by weight) with water....” (emphasis added). Based upon the disclosure in the specification, it would be clear to one of ordinary skill in the art that the percentage ranges recited in Claims 23 and 24 are weight percentages. Applicants believe that Claims 23 and 24 are in condition for allowance.

## **II. 35 U.S.C. §103(a)**

### **A. *Patent Publication 2003/0197310 by Bailey et al.***

Patent Publication 2003/0197310 by Bailey et al. (“Bailey publication”) is the publication of U.S. Patent Application No. 10/127,861 (the “Bailey application”), which was filed on April 22, 2002. Because the present inventors conceived and reduced to practice the presently claimed invention prior to the April 22, 2002, filing date of the Bailey application, however, the Bailey publication is not prior art to the present application.

Each of the claims of the present application requires a first spray color dispersion comprising a pigment water dispersion and a polymer binding agent. As shown in the Declaration under 37 C.F.R. §1.131 attached to this Response, the SPR 9000 series color products referred to in the Bailey publication are commercial embodiments of the spray color dispersions claimed in the present application. Furthermore, as shown in the attached Declaration, the present inventors developed the SPR 9000 series color products and their use in methods of producing multi-color concrete as claimed in the present application prior to the April 22, 2002, filing date of the Bailey application.

Because prior invention of the claimed subject matter has been established in accordance with 37 C.F.R. §1.131, the Bailey publication is not prior art to the present application and the rejection based upon the Bailey publication has been overcome.

### **B. *Remaining Rejections***

The remaining rejections are combinations of the Bailey publication and other references. These rejections are overcome in light of the discussion above establishing that the Bailey publication is not prior art to the present application. Additionally, the Applicants respectfully disagree with the representation that one of skill in the art would combine Bailey and Jungk

because the teachings of Jungk (to homogeneously disperse pigment granules in concrete) are inconsistent with the teachings of the Bailey application (to spray a liquid color dispersion onto a concrete surface, providing a patterned surface). There is therefore no motivation to combine the two references or expect that such a combination would lead to successful results.


### **Conclusion**

In view of the arguments set forth above, The Applicants believe that the claims as currently amended contain allowable subject matter. The Applicants therefore request that the Examiner allow all of the pending claims as currently amended.

Though no fee is believed to be due in connection with this response, the Commissioner is hereby authorized to charge any additional fees that are presently required, or credit any overpayment, to Deposit Account No. 13-0017.

Respectfully submitted,

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